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No. 111 Original

In The

# Supreme Court of the United States

October Term, 1987

STATE OF DELAWARE,

*Plaintiff,*

– against –

STATE OF NEW YORK,

*Defendant.*

## ANSWER

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## ANSWER

The State of New York, defendant, by its counsel, for its answer to the complaint of the State of Delaware, says:

1. It admits the allegations in paragraph 1 of the complaint.

2. It admits the allegation in paragraph 2 of the complaint that there is a dispute between the two states but denies that the dispute is ripe and within the original jurisdiction of this Court.

3. It admits the allegation in paragraph 3 that brokers doing securities brokerage business in New York and incorporated in Delaware ("debtor brokers") hold or held monies and other intangible property, but it denies that it wrongfully escheated such property. It is without knowledge or information sufficient to form a belief as to

the truth of the allegations in the second sentence of paragraph 3 that the debtor brokers have no identification or last known address of anyone claiming to be the *beneficial* owner of the distributions held or formerly held for the account of customers.

4. It denies the allegations in paragraph 4 of the complaint that Delaware is entitled to escheat distributions held or formerly held by debtor brokers. The remainder of paragraph 4 states legal conclusions to which no response is required.

5. It admits the factual allegations in paragraph 5 of the complaint except that it is without knowledge or information sufficient to form a belief as to the truth of the allegation that no other state besides New York is asserting a right contrary to Delaware's claims.

6. It denies the allegations in paragraph 6 of the complaint to the extent that they suggest that no brokerage corporation with a New York trading address incorporated in Delaware would be entitled to claim any of the abandoned property at issue in this case and states that the terms of section 1404 of the New York Abandoned Property Law speak for themselves.

7. It admits that the corporations listed in paragraph 7 have offices in New York, conduct business in New York, and were incorporated in Delaware at the time the complaint was filed, except for The First Boston Corporation, which has been incorporated in Massachusetts since 1932. It is without knowledge or information sufficient to form a belief as to the truth of the allegation that each of their predecessors were incorporated in Delaware.

8. It admits the allegations in the first and second sentences of paragraph 8 of the complaint. It admits that debtor brokers regularly allocate to the accounts of their customers amounts equal to the distributions to which they are beneficially entitled, but denies that these allocations always occur as payments are received from the issuer of the underlying securities.

9. It admits that, in certain instances, the debtor brokers may be unable to identify the *beneficial* owners of distributions. It admits the allegation that a debtor broker may sell its customer's securities in the open market and that a broker ("creditor broker") buying such securities in its own name (assuming that this is what the plaintiff means by "ultimate acquiror") may fail to remove the debtor broker's name as record owner of such securities before the record date on which a distribution becomes payable to that debtor broker. It is without knowledge or information sufficient to form a belief as to the truth of the allegation in the third sentence of paragraph 9 concerning the circumstances under which a debtor broker will know who the *beneficial* owner of a distribution may be after the sale of the underlying security to a creditor broker or the address of that *beneficial* owner. It denies that when no claim is made for a distribution that the debtor broker holds property of unknown creditors or creditors whose address cannot be determined from the books and records of the debtor broker.

10. It denies the factual allegations in paragraph 10 of the complaint except that it admits that since July 13, 1971, Delaware has had an Escheat Law which provides for the escheat of the property claimed by Delaware at issue in this case and states that the terms of sections

1198(6), (8), and (10) of the Delaware Escheat Law speak for themselves.

11. It admits the factual allegation in paragraph 11 of the complaint to the extent that New York has taken custody of abandoned property held by debtor brokers, but denies the remaining allegations of that paragraph.

12. It admits that since April 1, 1952, New York has provided that its Comptroller may take custody of personal property held by any corporation engaging in New York in the purchase, sale, or exchange of securities for or on behalf of any customers, but states that the terms of article V-A of the New York Abandoned Property Law speak for themselves.

13. It admits the factual allegation in paragraph 13 of the complaint that New York formerly published and disseminated a book entitled *Abandoned Property Law Handbook for Brokers and Dealers*, but states that this book has been superceded by a volume entitled *Handbook for Reporters of Unclaimed Funds* (2d ed. 1988), a copy of which has been lodged with the Clerk.

14. It admits that the text of the superceded *Abandoned Property Law Handbook for Brokers and Dealers* quoted in paragraph 14 of the complaint is accurate, but it denies that the characterization of New York's position is accurate.

15. It admits that the text of the superceded *Abandoned Property Law Handbook for Brokers and Dealers* quoted in paragraph 15 of the complaint is accurate, but denies that New York claims that it is entitled to retain

custody of property abandoned by creditors which do not have New York addresses.

16. It admits the allegations in the first sentence of paragraph 16 of the complaint to the extent that New York has taken custody pursuant to its Abandoned Property Law of abandoned property held by debtor brokers and denies the remainder. It admits the allegations of the second sentence of that paragraph to the extent that most of the debtor brokers have complied with their obligations under the Abandoned Property Law, but is without knowledge or information sufficient to form a belief as to the truth of the allegations concerning the reasons that debtor brokers may have given for refusing payment to Delaware of abandoned property. The terms of section 1404 of the Abandoned Property Law speak for themselves.

17. It is without knowledge or information sufficient to form a belief as to the truthfulness of the allegations in paragraph 17 of the complaint, but states that at the time the complaint was filed, at least three debtor brokers had refused to turn over abandoned property to the Comptroller.

18. It admits the allegation in the first sentence of paragraph 18 of the complaint to the extent that Paine Webber Incorporated ("Paine Webber") has declined to deliver abandoned property to the Comptroller, but denies that Delaware has correctly characterized Paine Webber's position. It admits that New York has commenced an administrative proceeding which is still pending against Paine Webber seeking recovery of abandoned property.

19. It admits the allegation in the first sentence of paragraph 19 of the complaint to the extent that Smith Barney, Harris Upham & Co. Incorporated ("Smith Barney") has refused to deliver abandoned property to the Comptroller, but it is without knowledge or information sufficient to form a belief as to the truthfulness of the allegation concerning the reasons for the refusal because it has never received a formal written statement of position from Smith Barney. It states that New York has not yet commenced an administrative proceeding against Smith Barney to recover abandoned property in Smith Barney's possession.

20. It admits the allegation in the first sentence of paragraph 20 to the extent that Kidder Peabody & Co. Incorporated ("Kidder Peabody") has refused to deliver abandoned property to the Comptroller, but is without knowledge or information sufficient to form a belief as to the truthfulness of the allegation concerning the reasons for the refusal because it has never received a formal written statement of position from Kidder Peabody. It states that New York has not yet commenced an administrative proceeding against Kidder Peabody to recover abandoned property in Kidder Peabody's possession.

21. It admits the allegations in the first sentence of paragraph 21 to the extent that New York has taken custody of substantial amounts of abandoned property held by debtor brokers which remains unclaimed by creditor brokers whose trading addresses, as shown by the books and records of the debtor brokers, are in New York, but denies that it took custody of such property wrongfully. It admits the allegations in the second sentence of the paragraph. It is without knowledge or information

sufficient to form a belief as to the truth of the allegations in the third sentence of that paragraph concerning what information the plaintiff received. It admits the allegations in the remainder of the paragraph except that it denies New York took property rightfully belonging to Delaware or that the creditors or their addresses cannot be determined from the books and records of the debtor corporations.

22. It admits the allegations in paragraph 22 of the complaint to the extent that there is a dispute between Delaware and New York concerning abandoned property, but denies that the dispute is a "controversy" within the meaning of article III, section 2 of the United States Constitution.

23. It denies the allegations in paragraph 23 of the complaint.

24. It denies the allegations in paragraph 24 of the complaint.

25. It denies the allegations in paragraph 25 of the complaint.

26. It denies the allegations in paragraph 26 of the complaint.

## AFFIRMATIVE DEFENSES

1. This Court lacks jurisdiction because the dispute between the two states is not ripe since Delaware failed to file a claim with the New York State Comptroller before commencing this action.

2. Delaware has failed to exhaust administrative remedies.

3. Delaware's claims are barred by laches and waiver.

4. Delaware has failed to state a claim upon which relief can be granted.

5. Under existing law, Delaware is not entitled to escheat any abandoned property in the custody of the Comptroller when it has neither alleged nor shown that the addresses of the creditors cannot be determined.

WHEREFORE, this Court should enter judgment dismissing the complaint.

Dated: New York, New York
July 27, 1988

Respectfully submitted,

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